

General Information Letter: Inclusion of fully-depreciated rental property in Illinois property factor.

July 22, 1998

Dear:

This is in response to your letter dated June 15, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL) which is designed to provide a general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

We are an Oklahoma based corporation located in xxxx xxxxxxxx, Oklahoma. We are leasing pipeline construction equipment to a contractor who has a job in Illinois.

According to the information I received from your tax specialists on June 15, 1998, since our equipment has been depreciated out, we are not liable for any type of tax, i.e. corporate, income, or sales, on the lease of our equipment.

We also understand that we will owe no business income tax since we have no actual presence in the state of Illinois.

In the event that we sell merchandise to our customer in Illinois, we understand that we will need to collect and remit a sales tax of 6.25%.

I am requesting that you please send me a letter stating that this information is correct, for my tax records.

#### Ruling

Only the issues relating to Illinois income tax are addressed by this GIL. A response to the sales tax issues raised by your letter will be forwarded under separate cover by the Department's sales tax division, to whom a copy of your letter has been referred.

Section 201(a) of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 et seq.) states in pertinent part as follows:

A tax measured by net income is hereby imposed on every...corporation...for each taxable year ending after July 31, 1969.

Section 201(c) of the IITA states in pertinent part as follows:

Beginning on July 1, 1979 and thereafter, in addition to such income tax, there is also hereby imposed the Personal Property Tax Replacement Income Tax measured by net income on every corporation.

As the foregoing provisions indicate, except as limited by the Illinois or Federal Constitutions, the income taxes imposed by section 201 of the IITA extend to every corporation. Accordingly, xxx xxxxxxxx, xxx. will be subject to the income tax imposed by section 201(a), as well as the Personal Property Tax Replacement Income Tax imposed by section 201(c) of the IITA.

As defined by the IITA, net income means that portion of a taxpayer's "base income" allocable to Illinois pursuant to the provisions of Article 3 of the IITA (IITA §202). In the case of a corporation, base income means the taxpayer's federal taxable income, as modified by specific statutory addition and subtraction provisions (IITA §203(b)). The IITA contains neither an addition nor subtraction modification relative to income derived from the rental of fully depreciated property. In addition, in the case of income allocated to Illinois pursuant to section 304(a) of the IITA, the determination of the property factor of the apportionment formula is made on the basis of the original cost of the person's real and tangible personal property (IITA §304(a)(1)(B)). "Original cost" is defined as the basis of such property for federal income tax purposes at the time of acquisition, without adjustment for deductions for depreciation, depletion, amortization, or the like (86 Ill. Adm. Code 100.3350(e)).

Accordingly, to the extent allocated to Illinois pursuant to the provisions of Article 3 of the IITA, xxx xxxxxxxx, xxx. will be subject to Illinois income tax with respect to such rental income.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Brian L. Stocker  
Staff Attorney - Income Tax